PENTADBIR TANAH DAN DAERAH PETALING & ORS v. BANDAR UTAMA CITY CORPORATION SDN BHD & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
UMI KALTHUM ABDUL MAJID JCA
ZALEHA YUSOF JCA
YAACOB MD SAM JCA
[CIVIL APPEAL NOS: B-01(A)-151-04-2016
& B-01(A)-152-04-2016]
24 FEBRUARY 2021

ADMINISTRATIVE LAW: *Judicial review – Application to quash decision – Acquisition of land – Whether affected rights and legitimate expectation of land owner – Unilateral amendment of development plan to provide temporary access – Whether temporary access meant to be permanent road – Whether decision makers acted in excess of jurisdiction – Whether there was undertaking by decision-maker that amended layout plan would not be affected by compulsory acquisition exercise – Whether doctrine of legitimate expectation could operate as bar to exercise of statutory powers to acquire land – Whether acquisition for public usage and benefits public as a whole – Whether acquisition in accordance with Land Acquisition Act 1960*

LAND LAW: *Acquisition of land – Compulsory acquisition – Whether affected rights and legitimate expectation of land owner – Unilateral amendment of development plan to provide temporary access – Whether temporary access meant to be permanent road – Whether decision makers acted in excess of jurisdiction – Whether there was undertaking by decision-maker that amended layout plan would not be affected by compulsory acquisition exercise – Whether doctrine of legitimate expectation could operate as bar to exercise of statutory powers to acquire land – Whether acquisition for public usage and benefits public as a whole – Whether acquisition in accordance with Land Acquisition Act 1960*

The first applicant, owner of a few pieces of land, entered into a joint venture agreement ('JVA') with the second applicant to develop the land into a mixed development township known as 'Bandar Utama'. Prior to the development of Bandar Utama, the first applicant submitted a layout plan of the land to the first respondent, Pentadbir Tanah dan Daerah Petaling and the fifth respondent, Jabatan Perancangan Bandar dan Desa Negeri Selangor ('JBPD') for approval and it was duly approved. Subsequently, in view of the development of an adjoining piece of land by Tropicana Golf & Country Resort Bhd ('Tropicana'), the fifth respondent amended the layout plan to provide access in and out of Tropicana's development through the first applicant's land. The first applicant was required to construct the access road, later known as Jalan Hilir. The first applicant and Tropicana entered into an agreement where the subject land was to be used as a temporary access in and out of Tropicana's development pending the completion of

Jalan Hilir. However, despite the completion of Jalan Hilir, and subsequently, Tropicana's completion of connecting its development to Jalan Hilir, the first applicant was not allowed to close the temporary access on the ground that the construction of a twin tunnel along Jalan Hilir had not been completed. After the completion of the twin tunnel, the first applicant terminated the agreement with Tropicana and closed the temporary access due to the traffic congestion along Jalan Tanjung and the temporary access. There was a discussion among Tropicana, the first applicant and the then Menteri Besar of Selangor putting forth a proposal to construct a bypass which would disperse the traffic from Tropicana's development to the NKVE/SPRINT Highway directly and to alleviate the traffic congestion at Jalan Hilir. The applicants alleged that the Menteri Besar had agreed to give a grant of RM1 million to the applicants upon completion of the bypass. Despite the discussion, the first respondent issued Forms E and F under the Land Acquisition Act 1960 ('LAA') to compulsorily acquire the subject land. The applicants filed an application for judicial review to quash the decision ('first judicial review'). The High Court allowed the first judicial review and the first, second and third respondents appealed to the Court of Appeal. However, pending the appeal, the first respondent issued Forms E and F to re-acquire the subject land. As a result, the applicants commenced the present application for judicial review. The crux of the applicants' case was that the decision or action of the respondents had affected the rights and the legitimate expectation of the applicants. The High Court allowed the applicants' application for judicial review. In essence, the High Court found that the respondents were in breach of the applicants' legitimate expectation and there was an abuse of power on the part of the respondents in the decision to re-acquire the subject land. Hence, the appeals *ie*, (i) Appeal No 151 by the first, second, third and fifth respondents; and (ii) Appeal No 152 by the sixth respondent, Majlis Bandaraya Petaling Jaya.

Held (allowing Appeals No 151 and 152 with costs)
Per Yaacob Md Sam JCA delivering the judgment of the court:

(1) In order to succeed on the principle of legitimate expectation, it was incumbent on the applicants to show that the second and the sixth respondent gave them an undertaking. The undertaking must be clear and that was to close the temporary access road once the applicants completed the construction of Jalan Hilir. The first applicant accepted the amended layout plan and proceeded to conclude 'Jalan Damansara Link Overhead Bridge Agreement' with Tropicana for the benefit of their development. There was no evidence that the State Authority made any representation or undertaking to the applicants that the amended layout plan will not be affected by a compulsory acquisition exercise. Similarly, there was no evidence that the State Authority had given the assurance to the respondent that once the construction of Jalan Hilir was completed, the temporary access road would be given back to the

applicants and that the temporary access was never meant to be a permanent road. Therefore, there was no representation or assurance made by the Menteri Besar or the State Authority that the acquisition of the subject land was not necessary or never been intended. (paras 45, 55 & 56)

(2) The letter by Lembaga Lebuhraya Malaysia ('LLM') was a reply to the application made by the first applicant and Tropicana for the benefit of their developments and was never copied or forwarded to any of the respondents/appellant. The letter showed that the requirement to provide temporary access was imposed by LLM as a result of the first applicant's own application to build an overhead bridge where cost sharing agreement was agreed between the first applicant and Tropicana. The letter did not bind the respondents and the State Authority, in that, it was not a decision of the decision makers, *ie*, the first, second, third and fifth respondents. It would be irrational on the part of the applicants after 23 years from the 'Jalan Damansara Link Overhead Agreement' to now claim that all steps taken by the applicants were to its detriment in complying with the amended layout plan. Therefore, the respondents' action was not illegal, irrational or unfair to the applicants and the doctrine of legitimate expectation should not be enforced against the respondents where the respondents had acted within its statutory powers in the interest of a larger section of the community. In any event, the second applicant, as the registered owner of the subject land, was entitled to compensation under the LAA. (paras 58 & 59)

(3) The acquisition, for public usage, will benefit the public as a whole and was not limited to the community of Bandar Utama or Tropicana and will pass the test of 'public purpose'. Considering the purpose of the acquisition, it could not be said that the respondents' decision to acquire the subject land was so outrageous in its defiance of logic or of the accepted moral standards. Therefore, the acquisition of the subject land was made in accordance with the provisions of the LAA and the decision to re-acquire the subject land by the respondents did not suffer from illegality, procedural impropriety, proportionality and irrationality. The applicants could not rely on the principle of estoppel to defeat the law *ie*, the LAA. Hence there were merits in the appeals which compelled the exercise of appellate intervention. (paras 72, 73, 78 & 79)

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2008] 6 CLJ 473 CA ***(foll)***

Council of Civil Service Unions & Ors v. Minister for the Civil Service [1985] 1 AC 374 ***(foll)***

Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 CLJ 538 CA ***(refd)***

Generation Products Sdn Bhd v. Majlis Perbandaran Klang [2008] 5 CLJ 417 FC ***(foll)***

A *Government Of The State Of Negeri Sembilan v. Yap Chong Lan & Ors And Another Case [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 FC* ***(foll)***
Herchun Singh & Ors v. PP [1969] 1 LNS 52 FC ***(refd)***
Law Pang Ching & Ors v. Tawau Municipal Council [2010] 2 CLJ 821 CA ***(refd)***
LBCN Development Sdn Bhd & Anor v. Pengarah Tanah dan Galian Selangor & Ors [2014] 3 CLJ 970 CA ***(refd)***
B *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 CLJ 65 FC* ***(refd)***
Ng Siu Tung v. Director of Immigration [2002] HKLRD 561 ***(refd)***
North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor [2011] 2 CLJ 392 CA ***(refd)***
C *North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC* ***(refd)***
Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC ***(refd)***
Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(refd)***
D *Regina v. North and East Devon Health Authority, Ex Parte Coughland [2000] 2 WLR 622* ***(refd)***
S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC ***(foll)***
Savrimuthu v. PP [1986] 1 LNS 24 SC ***(refd)***
Selangor State Government & Anor v. Kuala Lumpur Kepong Bhd [2017] 9 CLJ 31 CA
E ***(foll)***
Tenaga Nasional Bhd v. Ong See Teong & Anor [2010] 2 CLJ 1 FC ***(refd)***
Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors [2014] 6 CLJ 541 FC ***(refd)***
Yeap Seok Pen v. The Government of the State of Kelantan [1982] CLJ 475; [1982] CLJ (Rep) 372 FC ***(refd)***
F *Zaiton Musa lwn. Kerajaan Negeri Johor [2012] 1 CLJ 1047 HC* ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 3(1)(a), 8(3)
Rules of Court 2012, O. 53 r. 3(2)

(Civil Appeal No: B-01(A)-151-04-2016)
G *For the appellants - Mohd Syahrizal Syah Zakaria; Assistant State Legal Advisor, Selangor*
For the respondents - Gopal Sri Ram, Lim Choo Khim, Emily Wong & Chin Yan Leng; M/s Chooi, Saw & Lim

(Civil Appeal No: B-01(A)-152-04-2016)
For the appellant - Kamaruzaman Arif; M/s Kamaruzaman Arif, Amran & Chong
H *For the respondents - Gopal Sri Ram, Lim Choo Khim, Emily Wong & Chin Yan Leng; M/s Chooi, Saw & Lim*

[Editor's note: For the High Court judgment, please see Bandar Utama City Corporation Sdn Bhd & Anor v. Pentadbir Tanah Dan Daerah Petaling & Ors [2016] 1 LNS 1309 (overruled).]

I *Reported by S Barathi*

JUDGMENT

Yaacob Md Sam JCA:

Introduction

[1] There are two appeals before us which were heard together. For convenience, parties will be referred to as they were in the High Court.

[2] Appeal No. 151 is the first (Pentadbir Tanah dan Daerah Petaling), second (Kerajaan Negeri Selangor), third (Pengarah Tanah dan Galian Selangor) and fifth (Jabatan Perancangan Bandar dan Desa Negeri Selangor) respondents' appeal. Appeal No. 152 is the sixth respondent's (Majlis Bandaraya Petaling Jaya) appeal.

[3] Both appeals were lodged by the respondents in respect of the decision made by the High Court on 17 March 2016 in allowing the applicants' application for judicial review to quash the decision of the first, second and third respondents to compulsorily acquire an area of 1,320 square meters of land which forms part of the whole land of the second applicant (Bandar Utama Technology Park Sdn Bhd) held under Grant No. 54943, Lot 27680, Section 39, Bandar Petaling Jaya, Daerah Petaling, Selangor.

[4] After considering the written and oral submissions of the respective counsel and the records of appeal, we had unanimously allowed both the appeals. These are the reasons for our decision.

Background Facts

[5] The first applicant owned a few pieces of land in Mukim of Sungai Buloh, Selangor. It entered into a joint venture agreement (JVA) with the second applicant to develop the land into a mixed development township known as 'Bandar Utama'. The second applicant purchased from the first applicant Lot 27680 located within Bandar Utama. The second applicant is a fully owned subsidiary of the first applicant. They shared the same registered address at No. 1, Dataran Bandar Utama, Bandar Utama, 47000 Petaling Jaya, Selangor.

[6] Prior to the development of Bandar Utama, the first applicant submitted a layout plan of the land to the first and fifth respondents for approval. It was duly approved.

[7] In 1991, the fifth respondent amended the layout plan in view of the development of an adjoining piece of land by Tropicana Golf & Country Resort Berhad ("Tropicana"). It was approved by the first respondent. The amendments by the fifth respondent were to provide an access in and out of the Tropicana's development through the first applicant's land. The access road was later known as Jalan Hilir. The first applicant was also required to construct Jalan Hilir at its own costs which is about RM2 million.

[8] Tropicana commenced its development during the development of Bandar Utama. In 1993, the first applicant and Tropicana entered into an agreement where the subject land was to be used as a temporary access in and out of Tropicana's development pending the completion of Jalan Hilir.

[9] The temporary access was connected through the second applicant's private road, Jalan Tanjung on Lot 27680 and then the fourth respondent's land (LLM) which was previously acquired from the first applicant for the purpose of its use as part of the North Klang Valley Expressway (NKVE).

[10] The construction of Jalan Hilir was completed at the end of 1996. It was said that the fourth respondent granted an irrevocable licence as to the use of its land and gave assurance that the temporary access will be closed upon the completion of Jalan Hilir.

[11] However, the second and sixth respondents continued directing the first applicant to keep the temporary access open pending Tropicana to connect its development to Jalan Hilir.

[12] In 2008, Tropicana completed connecting its development to Jalan Hilir. Despite the completion, the first applicant was not allowed to close the temporary access on the ground that the construction of a twin tunnel along Jalan Hilir had not been completed. It was completed in early 2009.

[13] On 28 August 2009, the first applicant terminated the agreement with Tropicana and closed the temporary access due to the traffic congestion along Jalan Tanjung and the temporary access.

[14] There were then discussion among Tropicana, the first applicant and the then Menteri Besar of Selangor. A proposal was put forth to construct a bypass which will disperse the traffic from Tropicana's development to the NKVE/SPRINT Highway directly and to alleviate the traffic congestion at Jalan Hilir. It was alleged by the applicants that the Menteri Besar had agreed to give a grant of RM1 million to the applicants upon completion of the bypass.

[15] Despite the discussion, on 6 January 2010, the first respondent issued Forms E and F under the Land Acquisition Act 1960 (LAA 1960) to compulsorily acquire the subject land.

[16] The applicants then filed an application for judicial review to quash the said decision ("the first judicial review"). The High Court allowed the first judicial review and the first, second and third respondents appealed to the Court of Appeal.

[17] However, in 2014 pending the appeal of the first judicial review, the first respondent issued Forms E and F to re-acquire the subject land. As a result, on 13 February 2015, the applicants commenced the present application for judicial review.

Applicants' Grounds For Judicial Review

[18] The grounds for judicial review as may be gleaned from the statement filed pursuant to O. 53 r. 3(2) Rules of Court 2012 are as follows:

1. Nama dan perihalan pemohon-pemohon ialah Bandar Utama City Corporation Sdn Bhd (dahulunya dikenali sebagai Damansara Jaya Sdn Bhd) (No. Syarikat: 14165 - U) dan Bandar Utama Technology Park Sdn Bhd (No. Syarikat: 324415 - V) kedua-duanya beralamat di No. 1, Dataran Bandar Utama, Bandar Utama, 47400 Petaling Jaya, Selangor Darul Ehsan.

2. Pemohon pertama adalah pemilik berdaftar bidang tanah Geran 25102 Lot 12125 dan Geran 25103 Lot 100 (Hartanah asal) manakala pemohon kedua adalah pemilik berdaftar suatu bidang hartanah yang dipegang di bawah Geran No. 54943, Lot No. 27680, Seksyen 39, Bandar Petaling Jaya, Daerah Petaling, Negeri Selangor ("hartanah tersebut").

3. Responden pertama adalah Pentadbir Tanah bagi Daerah Petaling.

4. Responden kedua adalah Kerajaan Negeri Selangor dan juga Pihak Berkuasa Negeri sepertimana yang ditakrifkan di dalam Akta Pengambilan Tanah 1960.

5. Responden ketiga adalah Pengarah Negeri Jabatan Tanah dan Galian sebagaimana ditakrifkan di dalam Akta Pengambilan Tanah 1960.

6. Responden keempat adalah pihak berkuasa lebuhraya di Malaysia dan adalah pemilik beneficial suatu bidang hartanah yang digelar dalam afidavit yang difailkan bersama-sama di sini sebagai "Tanah LLM".

7. Responden kelima adalah pihak yang berkuasa untuk meluluskan pelan pembangunan dan meluluskan pembangunan di Negeri Selangor sebelum pelaksanaan Town & Country Planning Act 1973 (Act 172).

8. Responden keenam adalah pihak berkuasa tempatan untuk meluluskan pelan di kawasan Petaling Jaya selepas pelaksanaan Seksyen 5 Akta 172.

9. Responden ketiga telah mengeluarkan Notis dalam Borang A Akta Pengambilan Tanah.

10. Responden kedua telah memutuskan ("keputusan tersebut") untuk mengambil secara wajib kesemua 1320 meter persegi hartanah yang merupakan sebahagian daripada hartanah tersebut. Responden pertama dan kedua telah bersama-sama menyebabkan dikeluarkan notis-notis di dalam Borang E dan F, Akta Pengambilan Tanah terhadap pemohon-pemohon menurut keputusan tersebut.

A

11. Responden kelima telah pada setiap masa matan meluluskan suatu pelan tatatur terpinda dan mensyaratkan yang sama ke atas pemohon pertama dan kesemua pelan-pelan lain untuk membenarkan pembangunan di atas hartanah asal, keseluruhan Bandar Utama dan kesemua pembangunan-pembangunan yang berdekatan dengan Bandar Utama.

B

12. Secara khususnya, responden kelima telah menghendaki bahawa suatu jalan yang lambat launnya diberi nama Jalan Hilir Bandar ("Jalan Hilir") dibina untuk membenarkan akses dari dan kepada pembangunan-pembangunan yang berdekatan Bandar Utama.

C

13. Secara khususnya, pelan-pelan tersebut memperuntukkan suatu rangkaian jalan yang menyeluruh yang memberi khidmat kepada semua pembangunan-pembangunan yang terkait kepadanya.

14. Di dalam pelan-pelan tersebut, ada jalan akses diperuntukkan ke 3 tangki air di situ dan kepada Geran 54943 Lot 27680 dan Geran 54945 Lot 27679 Seksyen 39, Bandar Petaling Jaya, Daerah Petaling,

D

Negeri Selangor.

15. Pemohon pertama telah melakukan sedemikian atas galakan responden pertama, kedua, ketiga dan kelima kepada penjejasannya (detriment).

E

16. Responden pertama, kedua, ketiga dan kelima adalah diestop dari membelakangi pelan-pelan tersebut.

17. Responden pertama telah memperolehi Tanah LLM secara pengambilan wajib dari pemohon pertama.

F

18. Sekiranya responden keempat tidak memerlukan Tanah LLM tersebut, respoden keempat sebagai pemilik berdaftar Tanah LLM tersebut pada masa kini patut memindah milik tanah tersebut balik kepada pemohon pertama.

19. Keputusan tersebut dan/atau Notis-notis tersebut adalah:

G

a. *Mala fide*;

b. Menyalahi undang-undang;

c. Suatu penyalahgunaan kuasa-kuasa oleh responden-responden pertama, kedua dan ketiga;

d. Tidak rasional dan selainnya tidak wajar;

H

e. Bertentangan dengan kesemua prinsip-prinsip bersekadaran (principles of proportionality);

f. *Ultra vires* responden-responden pertama, kedua dan ketiga.

[19] The crux of the applicants' case for judicial review is that the decision or action of the respondents had affected the rights and the legitimate expectation of the applicants.

I

Findings Of The High Court

[20] On 17 March 2016, the High Court allowed the applicants' application for judicial review.

[21] The following paragraphs of the learned judge's grounds of judgment are relevant (paras 19, 20 and 21):

> (19) After hearing the submissions by parties, I am in agreement with the submission of the Applicant's counsel, Datuk Seri Gopal Sri Ram and therefore allowed this application in prayer 1.
>
> (20) The reasons in allowing prayer 1 are as follows:
>
> (a) It is settled principle that in exercising its power, a public body must act legally, reasonably and fairly (referred to the cases of *Datuk Bandar Kuala Lumpur v. Zain Azahari bin Zainal Abidin* [1997] 2 MLJ 17, *Majlis Perbandaran Seberang Perai v Tropiland Sdn Bhd* [1996] 3 MLJ 94, *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor* [1999] 3 MLJ 1 & *Abdul Rahman Brothers Sdn Bhd bin Abdullah Munir & Ors v. Datuk Bandar Kuala Lumpur* [2008] 6 MLJ 704).
>
> (b) The crux of the Applicant's case for Judicial Review is that the decision or action of the Respondents had affected the rights and the legitimate expectation of the Applicants.
>
> (c) It was not disputed that the planning authority unilaterally amended the development plan and requested the Applicants to construct Jalan Hilir on its own costs and without any compensation.
>
> (d) Pending the construction of Jalan Hilir, Applicants were supposed to give a temporary access to the Tropicana. The Applicants abided the request to provide temporary access to the Tropicana Developments.
>
> (e) I would like to emphasise it is also not in dispute that the Respondents had given assurance once the construction of Jalan Hilir completed, a temporary access will be given back to the Applicants.
>
> (f) Therefore I find that the temporary access was never meant to be a permanent road.
>
> (g) Based on this undisputed fact, principle of legitimate expectation surely applies as the Applicants are expected to be given back the subject land upon completion the construction of Jalan Hilir.
>
> (h) In addition to the above, I also make a finding that the act of the Respondents serving on the Applicants Form E and F is an abuse on two grounds. Firstly, it is not in dispute that the Form E & F were issued with full knowledge that an Appeal was

pending. Secondly, it is also noted the First Judicial Review Application was dismissed by the Court. I am of the view the act of the Collector issuing Form E & F is blatantly an abused of power. Case laws have repeatedly enunciated that the power to acquire must be exercise reasonably.

(i) I further make a finding and agreed with the Counsel of the Applicants' that the act of the Respondents acquiring the subject land was for the purpose of assisting Tropicana Developments and not for any public purpose. The Respondents' submission that they wish to acquire the subject land to improve the traffic flow was devoid of merit and further contradict the opinion of the consultant report of the Applicants. Even more damaging is the fact that the Respondents had chosen to rely on the report of the traffic flow prepared by the Tropicana Developments in which the report was prepared after the decision to re-acquire was made.

(21) Based on the above reasons, I find the Respondents had acted unreasonably and irrationally without regard to any consideration whatsoever. Therefore the Respondents had clearly abuse its statutory discretion and had acted in excess of its jurisdiction and in breach of the Applicants' legitimate expectation.

[22] In essence, the High Court found that the respondents were in breach of the applicants' legitimate expectation and there was an abuse of power on the part of the respondents in the decision to re-acquire the subject land.

[23] Hence, the learned High Court Judge has made the following order:

(a) Suatu perintah *Certiorari* dikeluarkan untuk memindahkan ke dalam Mahkamah Tinggi untuk ianya dibatalkan keputusan Responden Pertama, Kedua dan Ketiga ("Keputusan Tersebut") untuk memperolehi secara wajib kesemua 1320 meter persegi tanah yang membentuk sebahagian daripada tanah yang dipegang di bawah Geran No. 54943, Lot No. 27680, Seksyen 39, Bandar Petaling Jaya, Daerah Petaling, Negeri Selangor ("Tanah Tersebut") termasuk dan tidak terhad kepada pengeluaran ke atas Pemohon Pertama Notis-Notis dalam Borang A, E dan F masing-masing menurut Seksyen 4, 8, 10 dan 11 Akta Pengambilan tanah 1960 ketiga-tiganya bertarikh 17.11.2014. 22.12.2014 dan 22.12.2014 ("Notis-Notis tersebut");

(b) Suatu perintah Larangan dikeluarkan melarang Responden Pertama daripada meneruskan sebarang tindakan berturutan dengan Keputusan tersebut dan Notis-Notis tersebut dan daripada membuat suatu awad selepas daripada itu;

(c) Suatu Deklarasi bahawa sebarang tindakan-tindakan tercadang oleh Responden-Responden sama ada secara kumulatif atau secara perseorangan atau melalui mana-mana ejen-ejen atau pengkhidmat-pengkhidmat atau selainnya yang diperhitungkan untuk melaksanakan sebarang langkah atau mempunyai kesan menafikan Pemohon-Pemohon akan kegunaan, penikmatan dan pembangunan Tanah tersebut berturutan dengan kelulusan-kelulusan yang sebelum ini diberikan termasuk pelan tatatur terpinda yang didaftarkan oleh Responden Kelima sebagai JPBD/89/34/91/PD melalui apa jua cara termasuk pemakaian Akta Pemerolehan Tanah adalah batal dan tidak sah; dan

(d) Tiada perintah terhadap kos.

[24] Aggrieved with the decision, the first, second, third, fifth and sixth respondents filed notices of appeal to this court as stated in para. [2] above.

The Appeals

[25] Before us, the parties argued on three issues:

(i) legitimate expectation of the applicants;

(ii) acquisition of the subject land;

(iii) application of doctrine of estoppel.

The Respondents' Submission/Appeal

[26] On legitimate expectation which was raised as the main issue before us, learned counsel for the respondents submitted that before legitimate expectation could be raised, the applicants need to show that the respondents have made any legitimate representation to the applicants. And if there was a representation, whether the public authority had acted in breach of that representation.

[27] On the argument raised by the applicants that they had planned and submitted for "development order" and as such had legitimate expectation to carry the project accordingly, learned counsel for the respondents submitted that the argument devoid any merit because if it is to be accepted, the public authority will never be able to commence any public interest project due to everybody affected by any acquisition would raise the similar arguments. It was further submitted that the applicants can be compensated by compensation arising out of the intended acquisition which was made for public purpose "Bagi Tujuan Menaiktaraf Simpanan Jalan 2 Lorong Kepada 3 Lorong, Jalan Tanjung Bandar Utama Damansara Ke Seksyen 39 Bandar Petaling Jaya, Selangor.

[28] On the contention of the applicants that the State Authority and Lembaga Lebuhraya Malaysia (LLM) had given an assurance that once the construction of Jalan Hilir is completed, the subject land will be given back to the applicants, it was submitted for the respondents that the letter dated 13 September 1991 issued by the LLM did not involve the State Authority who is the acquiring authority. It was further submitted that the LLM has no authority to represent or act on behalf of the State Authority since under the law, any acquisition can only be made by the land administrator on behalf of the State Authority.

[29] On the contention of the applicants that the applicants had relied on the commitment given by the former Menteri Besar of Selangor on the alternative proposal with a grant of RM1 million, it was submitted for the respondents that such conditional proposal was made by the former Menteri Besar in his personal capacity and never been intended to bind the State Authority.

[30] Several authorities were cited to support the respondents' argument, including the Court of Appeal decision in *LBCN Development Sdn Bhd & Anor v. Pengarah Tanah dan Galian Selangor & Ors* [2014] 3 CLJ 970; *Law Pang Ching & Ors v. Tawau Municipal Council* [2010] 2 CLJ 821; *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor* [2011] 2 CLJ 392; the Federal Court decisions in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65; *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729; and the High Court case in *Zaiton Musa lwn. Kerajaan Negeri Johor* [2012] 1 CLJ 1047.

[31] Hence, it was submitted that the learned High Court Judge has erred in law and facts in finding that the applicants' legitimate expectation is applicable to bar the respondents in particular the State Authority from exercising its statutory power to acquire the subject land under s. 3(1)(a) of the LAA 1960 for public purpose when the applicants' legitimate expectation cannot override s. 8(3) of the LAA 1960 based on the principle laid down in *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor* (*supra*) that the doctrine of legitimate expectation "cannot and should not override the express statutory power vested in the State Authority".

[32] On the acquisition of the subject land, learned counsel for the respondents submitted that the learned High Court Judge has totally ignored the principle enunciated in the case of *LBCN Development Sdn Bhd & Anor v. Pengarah Tanah dan Galian Selangor & Ors* (*supra*) where it was held that "The scheme of the Land Acquisition Act 1960 does not give any powers in a personal capacity in the manner complained of against the fifth defendant. Under s. 3 acquisition is done by the 'State Authority'. The fifth defendant (Menteri Besar) at the most is a mouth piece for the 'State Authority' or its organ."

[33] It was further contended that the purpose of acquisition of the subject land is to upgrade Jalan Tanjung from two ways traffic to three ways traffic for public usage and to elevate massive traffic congestion in the surrounding area of Bandar Utama. The sixth respondent has spent the sum of RM3,159,674 to repair and upgrade Jalan Tanjung from two ways traffic to three ways traffic before it was blocked by the applicants. It was submitted that Jalan Tanjung has a strategic importance in organising the distribution of traffic and serves one of the alternative access across NKVE into SPRINT Highway in spite of using Persiaran Tropicana and Persimpangan Surian. It is the closest and fastest route heading eastward toward the SPRINT Highway from Tropicana. The trip that was originally takes less than 2km with a ride time of 3 minutes will turn to 6km with a ride time of 12 minutes if Jalan Tanjung is to be closed. Thus the acquisition of the subject land is significant and necessary for the respondents to exercise its public function as the State Government and local authority in overcoming severe traffic congestion along Jalan Tanjung and its surrounding connecting to the main road Lebuh Bandar Utama and will benefit a general interest of the public as a whole.

[34] It was further submitted that the acquisition of the subject land is for public purpose and not solely for Tropicana development as the upgrading of Jalan Tanjung will benefit the public and in conformity with the test of "public purpose" in *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314; [1982] 1 MLJ 204 where the court said "... the expression 'public purpose' is incapable of precise definition ... But in my view, it is still best to employ a simple common sense test, to see whether the purpose serves the general interest of the community."

[35] On the finding of the learned High Court Judge that the proposed traffic mitigation measures does not require the acquisition of the subject land based on the acceptance of the former Menteri Besar to the alternative proposal with a grant of RM1 million, it was submitted for the respondents that there was no conclusive agreement reached between the former Menteri Besar and the applicants based on the correspondences between the applicants in two letters in exh. 28 and letter of conditional acceptance by Menteri Besar (exh. 28 at Rekod Rayuan Bahagian C Jilid 3(3)). It was further submitted that the applicants' counter proposal to have a by-pass road was never agreed by the Menteri Besar.

[36] On the issue that the re-acquisition of the subject land was made in *mala fide* by the respondents, it was submitted that there was no stay order against the acquisition pending appeal and that the granting of the relief sought in the first judicial review application was not on the acquisition itself

A but merely on procedural defect ie, Form A was not issued. It was argued that the finding of the High Court that the action of re-acquisition as 'blatantly abuse of power' was wrong.

The Applicants' Submission/Appeal

B **[37]** Learned counsel for the applicants submitted that the applicants have a legitimate expectation that the subject land would be returned to them upon the completion of Jalan Hilir. It was argued that the temporary access (Jalan Tanjung) was never meant to be a public road in the amended layout plan. It was further submitted that the re-acquisition of the subject land resulted in such unfairness to the applicants amounting to an abuse of power justifying C intervention by the court. It was submitted that the High Court had correctly applied the principle of legitimate expectation. Several authorities were cited to support the applicants' argument: *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* (*supra*); *Regina v. North and East Devon Health Authority, Ex Parte Coughland* D [2000] 2 WLR 622; *Ng Siu Tung v. Director of Immigration* [2002] HKLRD 561.

[38] On the point of abuse of power, it was submitted that the High Court correctly rejected the respondents' contention that the purported acquisition will alleviate the traffic congestion. It was further contended that the finding E of abuse of power was further evinced by the conduct of the sixth respondent while the first judicial review was pending. The sixth respondent imposed, *inter alia*, a condition on Bandar Utama Capitol Sdn Bhd to surrender the subject land in granting planning approval of another building project of the applicants in the area. It was contended that such condition is made *mala fide* F which aims to pressure the applicants and to render the judicial review academic.

Our Deliberation And Decision

Principles Of Judicial Review

G **[39]** Before we embark on the discussion of the issues raised in these appeals, let us first state the law and principle in judicial review.

[40] The established principle in judicial review cases is that judicial review is not about challenging decision but it is about decision-making H process. In *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2008] 6 CLJ 473, the Court of Appeal states that:

> [15] Judicial review is not concern with reviewing the merits of the decision but rather the decision making process itself. Lord Hailsham of St. Marylebone LC in *Chief Constable of North Wales Police v. Evans* [1982] I 1 WLR 1155 at 1160, [1982] 3 All ER 141 at 143 puts it politely in this manner:
>
> ...

> [16] The legal positions in England, Hong Kong and Malaysia have always been that in judicial review proceedings, the court's sole function is simply to scrutinise the decision-making process and not to question the decision itself ...

[41] It must be shown to the satisfaction of the court that the decision which the applicants sought to quash is illegal, irrational, made with procedural impropriety and disproportionate. In the well-known case of *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1, Augustine Paul FCJ said:

> [38] To begin, it must be reminded that the respondents' application before the High Court is for judicial review on the decision made by an administrative body. It is common ground between the parties that in such proceedings, the court will not conduct an examination into the merit of the decision but rather to the decision-making process unless the decision is illegal, irrational, made with procedural impropriety and disproportionate ...

Legitimate Expectation Of The Applicants

[42] As alluded to earlier, the crux of the applicants' case for judicial review is that the decision or action of the respondents had affected the rights and the legitimate expectation of the applicants.

[43] The learned High Court Judge in para. [20] of his grounds of judgment gave the following reasons for his findings:

> b) The crux of the Applicant's case for Judicial Review is that the decision or action of the Respondents had affected the rights and the legitimate expectation of the Applicants.
>
> c) It was not disputed that the planning authority unilaterally amended the development plan and requested the Applicants to construct Jalan Hilir on its own costs and without any compensation.
>
> d) Pending the construction of Jalan Hilir, Applicants were supposed to give a temporary access to the Tropicana. The Applicants abided the request to provide temporary access to the Tropicana Developments.
>
> e) I would like to emphasise it is also not in dispute that the Respondents had given assurance once the construction of Jalan Hilir completed, a temporary access will be given back to the Applicants.
>
> f) Therefore I find that the temporary access was never meant to be a permanent road.
>
> g) Based on this undisputed fact, principle of legitimate expectation surely applies as the Applicants are expected to be given back the subject land upon completion the construction of Jalan Hilir.

[44] Learned counsel for the respondents argued that the learned High Court Judge has erred in his findings in para [20] of the grounds of judgment for the following reasons:

(i) In making the finding that the respondents had acted unreasonably, irrational, abuse its statutory discretion, acted in excess of its jurisdiction and in breach of the applicants' legitimate expectation, the learned judge overlooking the averments and evidence adduced by the respondents;

(ii) The learned judge erred in his finding that the applicants have a legitimate expectation that the subject land will never be acquired after the applicants construct Jalan Hilir in accordance to the layout plan dated 30 May 1991 which was approved by the Jabatan Perancang Bandar dan Desa Negeri Selangor;

(iii) There was no legitimate expectation when the evidence adduced by the respondents clearly showed that there was no representation or undertaking given by the State Authority or the respondents to give rise to legitimate expectation;

(iv) The doctrine of legitimate expectation cannot operate as a bar to the State Authority from exercising its statutory power to acquire the subject land under s. 3(1)(a) LAA 1960 for public purpose.

[45] In order to succeed on the principle of legitimate expectation, it is incumbent on the applicants to show that the second and the sixth respondents gave them an undertaking. The undertaking must be clear and that is to close the temporary access road (Jalan Tanjung) once the applicants completed the construction of Jalan Hilir.

[46] On the doctrine of legitimate expectation, we find guidance from the Federal Court decision in *Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan* [1999] 3 CLJ 65. In delivering the decision of the Federal Court, Edgar Joseph Jr FCJ said at p. 117:

> For our part, we prefer the view of Simon Brown L.J. in *Ex parte Baker* (*ibid*) and Sedley J. in *Ex parte Hamble* (*ibid*) as we find the reasoning there more persuasive. It is also a view which appears to be supported by de Smith, as the following extract from his book, *Judicial Review of Administration Action* (5th Edn.) indicate (at para 13-034):
>
> > Given the duty of a public body not to fetter its discretion under what circumstances will a legitimate expectation be protected in the face of a change in policy. Clearly, the change of policy must be a lawful exercise of discretion (per Lord Scarman in *Re Findlay* [1985] AC 318, 338). The body's discretion to alter its policy must

> therefore be exercised after taking into account relevant considerations, and ignoring the irrelevant. The body must also pursue authorised and not extraneous purposes. These, considerations and purposes can include matters such as the need to maintain national security and matters of public policy. Nor should the discretion be exercised unreasonably – for example. Simply in order to confound the recipient of the expectation, or in bad faith. The conduct of the recipient of the representation should not be relevant to a decision to revoke the representation.

After referring to the potential antithesis between the object of the protection of the legitimate expectation (legal certainty) and the object of the "no fettering" doctrine (flexibility) and observing that the issue may not always be resolved in favour of the later, de Smith says (at para 13-035):

> Although free to alter its policy, the authority is by no means free to ignore the existence of a legitimate expectation. Now that legitimate expectation has been accepted in Law as an interest worthy of protection, it existence becomes a relevant considerations which must be taken into consideration in the exercise of a discretion. It is placed on the scale and must be properly weighed.

Dealing with balancing exercise, de Smith, says this (in the same para):

> The weighing is, as we have noted many times, a matter principally for the authority, but the courts may intervene where the expectation is entirely ignored or given manifestly improper weigh (see, *R. v. Inland Revenue Commissioners ex p. M.F.K. Underwriting Agencies* [1990] 1 WLR 1545 per Bingham LJ when he said breach of an legitimate expectation may be unfair "particularly" if the promise acted on it. cf. the approach of Laws J in *Secretary of State for Transport, ex p. Richmond-upon-Thames LBC* [1994] 1 WLR 74). On the other hand, in *R. v. Ministry of Agriculture, Fisheries and Food ex p. Hamble (Offshore) Fisheries Ltd.* [1995] 2 AER 714, Sedley J accepted the existence of the substantive legitimate expectation.

Continuing on the same theme, de Smith says this (at para 13-135):

> It is at this point that the fact that the promises relied on the expectation to his detriment may be relevant. Detriment reliance will add to the weight of legitimate expectation. It may be overridden by competing public interest, but the greater the evident detriment to the promissee, the greater the countervailing weight of the public interest in order to override an expectation that is held to be legitimate.

[47] In *Law Pang Ching & Ors v. Tawau Municipal Council* [2010] 2 CLJ 821, Abu Samah Nordin JCA (as he then was) traces the history of doctrine of legitimate expectation in his judgment as follows:

A [24] The phrase "legitimate expectation" was first employed in *Schmidt v. Secretary for Home Affairs* [1969] AA ER 904. In that case a foreign student sought review of the Home Secretary's decision not to grant an extension of his temporary permit to stay in the United Kingdom.

...

B [31] The doctrine of legitimate expectation had been invoked by the Supreme Court (as it then was) in *J.P. Berthelsen v. Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134. In that case the Supreme Court held that the appellant, an American working in Kuala Lumpur as a staff correspondent with Asian Wall Street Journal had a legitimate expectation that his employment pass would not be cancelled prior to C giving him a right to make representations. Abdoolcader SCJ at p. 138 said that "all that need to be given was an opportunity to the appellant to make representations."

[32] A common trait in all these cases is that the aggrieved parties stand in direct relationship – without any go-between – with decision makers. D The expectation arises where a person responsible for taking a decision had induced in someone who may be affected by the decision a reasonable expectation that he will receive or retain a benefit or that he will be granted a hearing before the decision is taken. See De Smith, Woolf and Jowell, *Judicial Review of Administrative Action*, 5th edn. paras 8-37.

E **[48]** Thus, based on the above cited cases, the principles of legitimate expectation that can be deduced are as follows:

(i) the aggrieved parties must stand in direct relationship – without any go between – with the decision makers;

F (ii) legitimate expectation shall not be extended to claiming to get 'substance' of the expectation itself;

(iii) legitimate expectation is concern of a right of fair hearing or the opportunity to make representation; and

G (iv) the Government and any statutory bodies are entitled to review or reverse any policy for interest of majority.

[49] Coming back to the present appeals. The applicants' claim of the alleged undertaking takes forms of the letter dated 13 September 1991 issued by the Lembaga Lebuhraya Malaysia (LLM).

H **[50]** The impugned letter of which we reproduce, reads as follows:

I

Lembaga Lebuhraya Malaysia
(Malaysia Highway Authority)
Bangunan Yayasan Syed Kechik, Bangsar
Peti Surat 1133
Jalan Pantai Baru
59700 Kuala Lumpur

Telefon : 2544033
Telex : HWY MA 3157
Fax : 2550822

Bil(11)dlm.LLM/7/UE/1/2A/AM/Jld.III Tarikh : 13/09/91

1. Tropicana Golf & Country Resort Sdn Bhd.
Level 15 Shahzan Prudential Tower
30 Jalan Sultan Ismail
50250 Kuala Lumpur
(u/p: En. Harminder Singh)

2. Damansara Jaya Sdn. Bhd.
1, Persiaran Bandar Utama, Bandar Utama
47400 Petaling Jaya, Selangor Darul Ehsan
(u/p : En. Joseph S.K. Tan)

Tuan,

Per: (A) Cadangan Pembangunan Di Atas Lot 2813, Mukim Sg. Buloh Daerah Petaling: Jalan Keluar/Masuk (Oleh Tropicana Golf And Country Resort Sdn. Bhd.)

(B) Cadangan Pembangunan Di Atas Lot 97, 373, 2814, 15388, 15389, 15390 Dan 2810 Mukim Sg. Buloh Daerah Petaling: Persimpangan Bertingkat Yang Melintas Jalan Hubungan Ke Plaza Tol Damansara, Lebuhraya Baru Lembah Kelang (Oleh Damansara Jaya Sdn. Bhd.)

Perkara di atas dan permohonan tuan yang dimaksudkan adalah dirujuk.

Sehubungan dengan ini serta susulan daripada beberapa mesyuarat yang telah diadakan di antara pemaju, juruperunding pemaju, Perancang Bandar dan Desa Negeri, Jabatan Bekalan Air, Pengurusan Lebuhraya Berhad, Projek Lebuhraya Utara Selatan Berhad (PLUS) dan Lembaga Lebuhraya Malaysia (LLM), pihak kami mendapati bahawa permohonan ini melibatkan dua pihak pemaju yang berkenaan.

Pihak Lembaga Lebuhraya Malaysia pada dasarnya tidak mempunyai apa-apa halangan ke atas permohonan tersebut dan pertimbangan selanjutnya boleh diberikan tertakluk kepada syarat-syarat berikut di mana penyelarasan perlu dibuat di antara kedua pihak pemaju yang terlibat iaitu:

(a) Temporary access roads coloured pink by Tropicana Golf and Country Resort Sdn. Bhd. (TGCR) shall be constructed together with the overbridge by Damansara Jaya Sdn. Bhd. (DJSB). Refer to layout sketch LLM/NKVE/2A/DLR.1 &2

A (b) Temporary access roads by TGCR must be outside the limits of future extension of the Damansara Toll Plaza and its future approach road.

(c) For all temporary roads outside LLM's R.O.W. consent must be obtained by the land owner prior to construction.

B (d) All roads coloured pink shall be a temporary access for TGCR until such time when the permanent road network by DJSB is completed, then these temporary access shall be sealed off indefinitely including the medians. Refer to layout sketch LLM/NKVE/2A/DLR. 1 & 2

(e) No right turning movement is allowed from the ramp onto the C bridge. Median has to be extended accordingly.

(f) Traffic lights shall be installed for traffic turning right from the bridge onto the ramp merging with mainline.

(g) The design parameters used for acceleration and deceleration has to be reviewed accordingly as per attached sketch in Appendix I LLM/ D NKVE/2A/DLR.3

(h) JBA shall be allowed to use the temporary access road to enter the Effingham Water Reservoir until permanent road network is completed.

(i) The developer shall be allowed one way in only from the mainline E during construction period and to ensure also that the mainline and drainage is free from all silts and dust during this period.

(j) The developer shall ensure that all the access roads is well maintained. For those sections of the access roads that are within PLUS's maintenance limits, the developer shall enter an agreement F with PLUS as to their obligations and reimbursement of the maintenance costs. A draft copy of the agreement shall be sent to Lembaga Lebuhraya Malaysia for its scrutiny, prior to signing the agreement.

(k) Other conditions as stipulated by the State Town Planner based on G the endorsed layout drawings and in compliance with other local authorities.

(l) All detail engineering design must be submitted to LLM for approval prior to commencement of works.

(m) LLM reserves the right to review the temporary access road should H the service level of the Damansara link road is affected, and take appropriate action regarding the temporary access roads, including ordering their closure.

(n) The developer(s) must ensure that the access(es) to the surrounding kampungs that facilitated by the existing median openings, will not I be affected by the construction of the slip roads. Otherwise the developers are required to provide satisfactory solutions.

(o) All the conditions stated above shall remain effective even though there is a change in management. It is mandatory on the part of the developer(s) to inform the new management of these conditions.

Di dalam hal-hal yang demikian, sekiranya terdapat pertindihan syarat-syarat yang melibatkan kedua-dua pihak pemaju, maka penyelarasan dan penyelesaian perlu dibuat terlebih dahulu sebelum kerja-kerja dimulakan. Bersama-sama ini dimajukan lukisan LLM/NKVE/2A/DLR. 1 & 2 dan Apendix I LLM/NKVE/2A/DLR.I & 2 untuk rujukan selanjutnya.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah

sg

...

(Ir. Dato' Michael Yu Wen Chieh)
Ketua Pengarah
Lembaga Lebuhraya Malaysia

s.k - Pengarah Perancang Bandar & Desa (u/p: Puan Jamilah)
- J.K.R. Selangor (u/p: Ir. Mohamad bin Hussien) (Rujukan tuan JN.SEL.D3/3229(11)-26.10.90)
- J.B.A. Selangor (u/p: Ir. Ng Seik Leong)
- PLUS
- PLB
- Zaidun Leng Sdn, Bhd.
- Perunding Talico
- Pengarah Wilayah Tengah, L.L.M.

[51] The applicants also alleged that the respondents had made a representation to the applicants in the form of a letter dated 10 December 2009 from the Menteri Besar of Selangor, Tan Sri Dato' Abdul Khalid bin Ibrahim. The letter relates to the proposed acquisition of the subject land for the construction of Jalan Tanjung. For ease of reference, the Menteri Besar's letter is reproduced below:

Chief Minister State Of Selangor
Malaysia

December 10, 2009

Y.Bhg. Dato' Teo Chiang Kok
Director
Bandar Utama City Corporation Sdn Bhd
1, Persiaran Bandar Utama, Bandar Utama,
47800 Petaling Jaya,

A Dear YBhg Dato' Teo Chiang Kok;

Proposed Acquisition Of Bandar Utama Land For Jalan Tanjung

I refer to the above subject and your letter dated 9 December 2009.

2. We are in agreement to your proposal to connect directly onto Sprint
B Highway bypassing Jalan Tanjung as stated in paragraph 3 in your letter. We hope that you can implement the proposal until completion subject to all technical requirements and procedures set out (by) the relevant authorities.

3. In consideration to this, the State Government and Majlis Daerah
C Petaling will be giving you RM1 million grant upon completion of the said road.

4. However, due to public interest, Jalan Tanjung will remain open to public at existing condition.

5. We thank you for your proposal to help ease the traffic condition at
D the area and your cooperation to the State Government.

Thank you.

Kind regards

sg.

E (Tan Sri Dato' Abdul Khalid bin Ibrahim)
Dato' Menteri Besar Selangor

cc. Y.bhg. Dato' Hj Mohamad Roslan bin Sakiman
Datuk Bandar MBPJ
Majlis Bandaraya Petaling Jaya (MBPJ), Jalan Yong Shook Lin
F 46675 Petaling Jaya.

YB Puan Elizabeth Wong
Ahli Majlis Mesyuarat Kerajaan Negeri, Pejabat EXCO
Tingkat 2, Bangunan SSAAS
40503 Shah Alam

G YB Tuan Ronnie Lui Thian Khiew
Ahli Majlis Mesyuarat Kerajaan Negeri, Pejabat EXCO
Tingkat 15, Bangunan SSAAS
40503 Shah Alam

YB Tuan Sivarasa Rasiah
H Ahli Parlimen Subang
No. 3, Jalan 14/31
46100 Petaling Jaya

Penasihat Undang-undang, MBPJ
Majlis Bandaraya Petaling Jaya (MBPJ)
Jalan Yong Shook Lin
I 46675 Petaling Jaya

Pengarah Jabatan Kejuruteraan, MBPJ
Majlis Bandaraya Petaling Jaya (MBPJ)
46675 Petaling Jaya

Y.Bhg. Dato' Manpal Singh
President of Bura, No. 35, BU 4/2
Bandar Utama
47800 Selangor.

[52] Based on these two purported letters, learned counsel for the applicants argued that the applicants have a legitimate expectation that the subject land would be returned to them upon the completion of Jalan Hilir. It was contended that the acquisition of the subject land resulted in such unfairness to the applicants and an abuse of power on the part of the respondents. It was also contended that the acquisition exercise is done for inadmissible purpose or on irrelevant grounds that is being done for the purpose of assisting Tropicana Development, not for any public purpose. It was argued that the second respondent as the acquiring authority failed to take into consideration the assurance given to the applicants by LLM and the Menteri Besar of Selangor, that once the construction of Jalan Hilir completed, Jalan Tanjung will be closed and the applicants can have the subject land back. It was also submitted that the alternative route proposed by the applicants to the Menteri Besar was accepted by the Menteri Besar and the acquisition became unnecessary.

[53] Learned counsel for the respondents, on the other hand, submitted that in order for legitimate expectations to exist, the applicants must show that the representation made by the respondents gave direct and clear undertaking. The applicants, reliance on representation that forms an undertaking is based on the letter dated 13 September 1991 from the Ketua Pengarah Lembaga Lebuhraya (LLM) to the first applicant and Tropicana development and secondly, the letter from Menteri Besar of Selangor dated 10 December 2009. It was further contended that notwithstanding the approval of the layout plan for a such major scale development in Bandar Utama and surrounding area by the Jabatan Perancang Bandar dan Desa Negeri Selangor in 1989, the requirement for public purpose will arise or foreseeable and land acquisition exercise is expected to be carried out by the State Authority for public benefit.

[54] It was further contended that the applicants did not lodge any appeal or challenge on the amendment to the layout plan made by the respondents in 1991 under the Town and Country Planning Act 1976 and the times for such has passed. The amendment made to layout plan will cater for the new road access not only to the applicants but also to Tropicana development.

[55] We observed from the evidence that the first applicant's layout plan was approved by Jabatan Perancang Bandar dan Desa (JPBD) in 1989. JPDB amended the first applicant's plan in 1991. The amendment among others contained Jalan Hilir as a means of access to both Bandar Utama and Tropicana. The first applicant accepted the amended layout plan and proceeded to conclude "Jalan Damansara Link Overhead Bridge Agreement" with Tropicana for the benefit of their development.

[56] What is so plain to us is that there is no evidence that the State Authority made any representation or undertaking to the applicants that the amended layout plan will not be affected by a compulsory acquisition exercise. Similarly, there is no evidence that the State Authority had given the assurance to the applicants that once the construction of Jalan Hilir is completed, the temporary access road (Jalan Tanjung) will be given back to the applicants and that the temporary access was never meant to be a permanent road. In fact, it was the first applicant's letter dated 9 December 2009, that suggested to construct by-pass which connected directly onto SPRINT Highway, by-passing Jalan Tanjung. In response to the first applicant's letter, the Menteri Besar insisted that "... due to public interest, Jalan Tanjung will remain open to public, at existing condition". Following that, on 15 December 2009 the applicants made a counter-proposal to the Menteri Besar on the "Proposed By-pass For Direct Access Onto Sprint Highway" but there was no response forthcoming from the office of Menteri Besar. The record also showed that the applicants never secured any agreement from the Menteri Besar or the State Authority on their proposal. From the facts and circumstances we have highlighted above, we are of the view that there is no representation or assurance made by the Menteri Besar or by the State Authority that the acquisition of the subject land is not necessary or never been intended.

[57] In *LBCN Development Sdn Bhd & Anor v. Pengarah Tanah Galian Selangor & Ors* (*supra*), the Court of Appeal explained that "The scheme of the Land Acquisition Act 1960 does not give any powers in personal capacity to the Menteri Besar (the fifth defendant). Under s. 3, acquisition is done by the State Authority. The Menteri Besar at the most is a mouth piece for the State Authority or its organ." Thus, it is our view that the purported Menteri Besar's 'undertaking' is just a red herring on the part of the applicants.

[58] We turn now to the LLM's letter. We observed that the LLM's letter dated 13 September 1991 was a reply to the applications made by the first applicant and Tropicana development to LLM for the benefit of their developments. We note that the LLM's letter was never copied or forwarded to any of the respondents/appellants here. As alluded earlier, the applicant must show that the State Authority or the respondents/appellants here gave direct and clear undertaking. By reading the LLM's letter, we are in the

agreement with the respondents that the LLM's letter does not bind the respondents and the State Authority. In other words, it is not a decision of the decision makers, ie, the first, second, third and fifth respondents. We are mindful that the applicants may have some reasonable basis or expectation but the LLM's letter was never issued on behalf of the respondents or with instruction of the respondents. In *Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 CLJ 538; [2008] 4 MLJ 309, the Court of Appeal held that the representations can only be made by people having the authority under the law.

[59] In light of the foregoing, we are inclined to agree with the respondents' submission that the learned High Court Judge has erred in his finding that the planning authority unilaterally amended the layout plan on 31 May 1991. We agree with the respondents that the LLM's letter showed that the requirement to provide temporary access was imposed by LLM as a result of the first applicant's own application to build an overhead bridge where cost sharing arrangement was agreed between the first applicant and Tropicana development. It would be irrational on the part of the applicants after 23 years from the "Jalan Damansara Link Overhead Agreement" for the applicants to claim now that all steps taken by the applicants were to its detriment in complying with the amended layout plan. Bearing in mind that the policy-makers have the discretion to change their policies, we do not find that the action of the respondents to be illegal, irrational or unfair to the applicants.

[60] Therefore, in the factual matrix of this case, the doctrine of legitimate expectation should not be enforced against the respondents where respondents had acted within its statutory powers in the interest of a larger section of the community. In any event, the second applicant as the registered owner of the subject land is entitled to compensation under the LAA 1960.

Acquisition Of The Subject Land

[61] We now come to deal with the second issue, the acquisition of the subject land.

[62] On the issue of acquisition of the subject land, the learned High Court Judge, *inter alia* made the following findings (para. 20 of the grounds of judgment):

> (h) In addition to the above, I also make a finding that the act of the Respondents serving on the Applicants Forms E and F is an abuse on two grounds. Firstly, it is not in dispute that the Form E & F were issued with full knowledge that an Appeal was pending. Secondly, it is also noted the First Judicial Review Application was dismissed by the Court. I am of the view the act of the Collector issuing Form E & F is blatantly an abused of power. Case laws have repeatedly enunciated that the power to acquire must be exercised reasonably.

A

(i) I further make a finding and agreed with the Counsel of the Applicants that the act of the Respondents acquiring the subject land was for the purpose of assisting Tropicana Developments and not for any public purpose. The Respondents' submission that they wish to acquire the subject land to improve the traffic flow was devoid of merit and further contradict the opinion of the consultant report of the Applicants. Even more damaging is the fact that the Respondents had chosen to rely on the report of the traffic flow prepared by the Tropicana Developments in which the report was prepared after the decision to re-acquire was made.

B

[63] Learned counsel for the respondents submitted that a legitimate expectation of the applicants cannot and should not, override the State Authority's obligation in exercising its statutory duty of acquiring the land for public purpose under s. 3(1)(a) LAA 1960.

C

[64] Thus, the doctrine of legitimate expectation cannot be extended to bar the powers of the State Authority to acquire land under the LAA 1960.

D

[65] Learned counsel for the applicants, on the other hand, submitted that the learned judge has made a correct finding that there was an abuse of power on the part of the respondents in re-acquiring the subject land. Several authorities were cited to support the applicants' argument: *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14; [1983] 2 MLJ 35; *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135; *Savrimuthu v. PP* [1986] 1 LNS 24; [1987] 2 MLJ 173; *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Ors* [2014] 6 CLJ 541; [2014] 4 MLJ 765.

E

F

[66] As alluded to earlier, the purpose of the acquisition of the subject land is stated "... Bagi Tujuan Menaiktaraf Simpanan Jalan 2 Lorong Kepada 3 Lorong, Jalan Tanjung Bandar Utama Damansara Ke Seksyen 39 Bandar Petaling Jaya, Selangor."

G

[67] Section 3(1)(a) of LAA 1960 provides the power of the State Authority to acquire land for any public purpose. In *S. Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314, the Federal Court held:

H

The expression 'public purpose' is incapable of a precise definition. No one in fact has attempted to define it successfully. What all the textbooks have done is to suggest the test to be applied in determining whether a purpose is a public purpose. Various tests have been suggested. But in my view it is still best to employ a simple common sense test, that is, to see whether the purpose serves the general interest of the community.

I

[68] In the Court of Appeal case of *Selangor State Government & Anor v. Kuala Lumpur Kepong Bhd* [2017] 9 CLJ 31; [2017] 3 MLJ 205, Tengku Maimun Tuan Mat JCA (as Her Ladyship then was) (delivering the judgment of the court) stated:

> [29] More importantly, as highlighted by learned ALA, there is nothing in the LAA 1960 that requires compliance with other laws before the acquisition of the land can be validly done. In *Ahmad Saman (Ahmad bin Saman v. Kerajaan Negeri Kedah* [2003] 4 MLJ 705; [2004] 1 CLJ 211, CA), Arifin Zakaria JCA (as he then was) said at p. 215:
>
> Thus, it would appear that the acquisition may be challenged on any of the following grounds:
>
> (a) that the acquiring authority has misconstrued its statutory powers;
>
> (b) that the purpose stated in the declaration does not come within s. 3;
>
> (c) where it can be shown that the acquiring authority has acted in bad faith;
>
> (d) where the acquiring authority has acted contrary to the law.

[69] Her Ladyship further stated at para [37]:

> [37] Further, considering the purpose of the acquisition, it cannot be said that the respondent's decision to acquire the scheduled land was so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it. Consequently, we found that the decision to acquire the schedule land did not suffer from irrationality.

[70] The challenge of *mala fide* is only relevant when the purpose of acquisition is not authorised by any law. According to *Yeap Seok Pen v. The Government of the State of Kelantan* [1982] CLJ 475; [1982] CLJ (Rep) 372 case:

> *Mala Fides*
>
> The second issue is whether or not the State Government acted *mala fide* i.e. in bad faith when acquiring this property.
>
> When considering subsection (3) of s. 8 of the Act, the Privy Council in *Syed Omar Alsagoff & Another v. State of Johore* [1979] 1 MLJ 49, said that it was possible to challenge the validity of a s. 8 declaration on the ground of bad faith, Viscount Dilhorne said at page 50:
>
> > Section 8 (3) ... Provides that the declaration [in form D] shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory

> powers (see *Anisminic v. Foreign Compensation Commission* [1969] 2 AC 147) or that purpose stated in the declaration does not come within s. 3, in the absence of good faith ... this subsection renders it not possible to challenge its validity by asserting that some of the land to which relates is not needed for the purposes stated or that the land is in fact wanted purposes other than those specified.

See also the judgment of this Court in *S. Kulasingam & Another v. Commissioner of Lands, Federal Territory & Ors.* [1982] CLJ (Rep) 314; [1982] 1 MLJ 204, 211. In an old English case Vaughan Williams LJ said in the Court of Appeal:

> In my judgement, it is not true to say that the corporation have taken this land which they have taken with the object of using it for the purposes authorised by the legislature. You are acting *mala fide* if you are seeking to acquire and acquiring lands for a purpose not authorised by the Act of Parliament.

[71] In *Generation Products Sdn Bhd v. Majlis Perbandaran Klang* [2008] 5 CLJ 417 the Federal Court explains the scope of *mala fide* as follows:

> [10] When it comes to assessing whether the authority has exercised its power for any improper purpose, the motive of exercising the power is irrelevant. Unlike case where the exercise of power is challenged on grounds of *mala fide*, when personal spite, animosity, malice, fraud, corruption or dishonesty become relevant. In respect of the earlier instance, however, even if the authority has the best of intentions, if its act falls outside the scope of the power conferred upon it, the exercise of power is deemed *ultra vires* and therefore liable to be declared void.

[72] Applying the principle enunciated in authorities cited above, we agree with the respondents that the acquisition of the subject land is for public usage that will solve and greatly improve the severe and prolonged traffic problem along Jalan Tanjung and its surrounding connecting to the main road Lebuh Bandar Utama. In fact, the sixth respondent (Majlis Bandaraya Petaling Jaya) has spent at least in the sum of RM3 million to repair and upgrade Jalan Tanjung from two ways traffic to three ways traffic for public usage. It is clearly that the acquisition will benefit the public as a whole and not limited to the community of Bandar Utama or Tropicana and will pass the test of 'public purpose' in *S. Kulasingam*. To borrow the words in *Selangor State Government & Anor v. Kuala Lumpur Kepong Bhd* (*supra*) considering the purpose of the acquisition, it cannot be said that the respondents' decision to acquire the subject land was so outrageous in its defiance of logic or of accepted moral standards.

[73] With respect, we are of the view that the learned judge has erred in his finding in respect of this issue in light of the reasons discussed where it is our finding that the acquisition of the subject land was made in accordance with the provisions of the LAA 1960.

Application Of Doctrine Of Estoppel

[74] The last issue to deal is whether the doctrine of estoppel applicable against the respondents from acquiring the subject land.

[75] With regard to the arguments of counsel for the applicants that the respondents were estopped from re-acquiring the subject land on the reasons that the LLM has given an undertaking to return the subject land to the applicants, we are unable to see any merit in his contention.

[76] Be that as it may, on the issue of estoppel, we find guidance from the Federal Court decision in *Government Of The State Of Negeri Sembilan v. Yap Chong Lan & Ors And Another Case* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144; [1984] 2 MLJ 123, Eusoffe Abdoolcadeer FCJ held that (at p. 150 (CLJ); p. 128 (MLJ)):

> On the matter of the concept of equitable estoppel in public Jaw, we would refer the decision of the House of Lords in *Newbury District Council v. Secretary of State for the Environment* [1981] AC 578 in which Lord Fraser of Tullybelton deprecated (at p. 606) the introduction of 'an estoppel or bar, personal to the particular party, which is quite inappropriate in this field of law, which is concern with rights that run with land', and he went to add that 'to do so would lead to uncertainty and confusion'. Lord Scarman in the course of his speech said (at p. 616):
>
> > 'In the field of property law, equity is a potent protection of private rights, operating upon conscience of those who have notice of their existence. But this is no reason for extending it into the public law of planning control, which binds everyone' and he continued (at p. 617): My Lords, I agree with the view so consistently by Lord Parker C.J., that it is wrong to introduce into public administrative law concepts such as equitable estoppel which are essentially aids to the doing of justice in private law.

[77] His Lordship further held (at p. 151 (CLJ); p. 129 (MLJ)):

> The application of the doctrine of equitable estoppel and the injection of equity in the circumstances was misconceived and the learned Judge's conclusion on the issue cannot therefore be sustained.

[78] Applying the principles enunciated in *Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & Ors* (*supra*); *Selangor State Government & Anor v. Kuala Lumpur Kepong Bhd* (*supra*) and well-known authority of judicial review *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] 1 AC 374, we are of the view that the decision to re-acquire the subject land by the respondents did not suffer from illegality, procedural impropriety, proportionality and irrationality. The applicants cannot rely on the principle of estoppel to defeat the law ie, the LAA 1960. We are thus unable to sustain the applicants' argument on this issue.

[79] We are mindful of the principles of appellate intervention pronounced by the Federal Court in *Herchun Singh & Ors v. PP* [1969] 1 LNS 52; [1969] 2 MLJ 209 that "an appellate court should be slow in disturbing such findings of fact arrived at by the judge, who had the advantage of seeing and hearing the witness, unless there are substantial and compelling reasons for disagreeing with the finding." We are not satisfied that the learned judge, with respect, assessed all the relevant material. The learned judge failed to consider the relevant case-laws on the subject and to analyse the issues in the present case prior to arriving at his conclusion in allowing the applicants' application for judicial review. Hence, in the two present appeals, for all the foregoing reasons, we find there are merits in the appeals which compelled us to exercise our appellate intervention. Appellate intervention is justified.

Conclusion

[80] In light of all the above, we unanimously allowed both the appeals No. 151 and No. 152 with costs. The order of the High Court is set aside.